U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 99 122 50111 Office: Vermont Service Center Date: AUG 11 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

for Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference immigrant visa petition was denied by the director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a horse farm which seeks to employ the beneficiary permanently in the United States as a horse trainer at an annual salary of $20,571.20. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established that it had the financial ability to pay the beneficiary's proffered wage as of July 17, 1995, the filing date of the visa petition.

On appeal, counsel provides a brief.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's filing date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is July 17, 1995. The beneficiary's salary as stated on the labor certification is $9.89 per hour which equates to $20,571.20 annually.

With the original petition, the petitioner submitted cancelled payroll checks for the beneficiary for the period of July 7, 1995 through December 18, 1998.

On July 20, 1999, the director requested additional evidence of the petitioner's ability to pay the proffered wage as of July 17, 1995.

In response, counsel submitted another copy of the beneficiary's 1995 cancelled payroll checks. The beneficiary earned $400 per week from July 7, 1995 through December 29, 1995.

The director concluded that the documentation was insufficient to establish that the petitioner had the ability to pay the proffered wage as of July 17, 1995 and denied the petition accordingly.

On appeal, counsel argues that the evidence submitted demonstrated that the petitioner did have the ability to pay the proffered wage and since the petitioner actually paid the beneficiary the proffered wage before and after the filing date of the petition, the petition should be approved.

Counsel is correct. The cancelled checks submitted establish that the petitioner did, in fact, have the ability to pay the proffered wage as of July 17, 1995 and continuing to present.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.